

THERESA L. GUILLAUME)	
Claimant)	
)	
VS.)	
)	
BOEING COMPANY)	
Respondent)	Docket Nos. 255,016
)	261,067
AND)	
)	
INSURANCE COMPANY STATE OF)	
PENNSYLVANIA)	
Insurance Carrier)	

In contrast, claimant contends the Board should dismiss the respondent's appeal. Claimant argues the compensability issue of whether claimant suffered an accidental injury while employed by the respondent was decided in previous preliminary hearing orders, the first one dated May 18, 2000, and the next one dated December 29, 2000. Claimant argues the only issue before the ALJ for decision at the February 6, 2000, preliminary hearing was whether claimant was temporarily and totally disabled. Claimant asserts the ALJ has the authority to grant or deny both temporary total disability and medical compensation at a preliminary hearing. Thus, the claimant contends the Board does not

have jurisdiction to review a preliminary hearing finding concerning temporary total disability benefits.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board makes the following findings and conclusions:

The first preliminary hearing was held in this case on March 18, 2000, and concerned only Docket No. 255,016. At the completion of the hearing, the ALJ entered a preliminary hearing Order dated the same date that found claimant's exposure to chemicals at work at least temporarily exacerbated a preexisting underlying condition. The ALJ also authorized Dr. Richard Spann for all medical treatment, ordered an independent medical examination (IME) of claimant, and took claimant's request for temporary total disability benefits under advisement pending the receipt of the IME report. The respondent did not appeal that preliminary hearing Order to the Board.

On June 15, 2000, respondent filed a Motion to Terminate Benefits. The respondent contended the IME was no longer necessary and the medical treatment respondent was ordered to provide through Dr. Richard Spann should be terminated. The hearing on respondent's motion was held on July 20, 2000. As a result of that hearing, the ALJ ordered an IME of claimant and this time appointed Dr. Daniel C. Doornbos, M.D., to conduct the examination and report to the ALJ claimant's diagnosis, provide a causation opinion, and treatment recommendations, if any. Claimant's temporary total disability request was again taken under advisement pending receipt of the IME report. The respondent did not appeal that preliminary hearing Order to the Board.

The ALJ received Dr. Doornbos' IME report on October 19, 2000. Thereafter, the ALJ entered a preliminary hearing Order dated December 29, 2000. The order was based on the May 18, 2000, preliminary hearing and exhibits, the July 20, 2000, motion hearing and exhibits, plus Dr. Doornbos' October 2, 2000 IME report. In the December 29, 2000, preliminary hearing Order, the ALJ denied respondent's Motion to Terminate Benefits. The ALJ found that claimant had obstructive airway disease. The cause of the disease was most likely claimant's 30 year of cigarette smoking history. But claimant's testimony, as well as, the IME report indicate this preexisting condition was aggravated or exacerbated by claimant's chemical exposure while employed by the respondent. Medical treatment was authorized through Dr. Daniel C. Doornbos. Claimant was granted temporary total disability benefits, if taken off work by the authorized treating physician. Respondent did not appeal that preliminary hearing Order to the Board.

On November 6, 2000, claimant filed another Application for Hearing. Respondent had returned claimant to work from medical layoff on September 21, 2000. On September 25, 2000, while claimant was working, she was again exposed to chemicals at work. Because of that exposure, claimant had a respiratory attack that required her to be

transported to the hospital emergency room by ambulance. This Application for Hearing includes the September 25, 2000, chemical exposure and alleges further injury to claimant's lungs.

The February 6, 2001, preliminary hearing, referenced both Docket Nos. 255,016 and 261,067, the new docket number containing the claimant's last exposure on September 25, 2000. Claimant requested this preliminary hearing for the payment of temporary total disability benefits. The Administrative Law Judge clarified the preliminary hearing issues before claimant testified at the preliminary hearing when she asked claimant, "What are your requests for preliminary hearing today?" Claimant's attorney replied, "We are requesting temporary total for a period prior to the present time starting about March 10, 1999, up to the present and continuing until the claimant is released by Dr. Doornbos." Respondent's attorney replied, "We object to temporary total disability benefits being awarded."¹ Additionally, respondent's attorney, during his argument after claimant's testimony at the preliminary hearing, clarified the issue to be decided as follows: "We are before the court solely for the purpose of litigating whether or not this individual is entitled to temporary total disability benefits."²

The Board finds the February 6, 2000, preliminary hearing transcript clearly indicates the only issue before the ALJ was whether claimant was temporarily and totally disabled. Whether claimant's alleged accidental injury arose out of and in the course of her employment with the respondent was not an issue at this preliminary hearing.

The December 29, 2000, preliminary hearing Order had previously addressed the compensability issue and the ALJ had found claimant's chemical exposure had aggravated or exacerbated her underlying preexisting obstructive airway disease. The respondent failed to appeal the compensability issue to the Board. Thus, the Board does not have jurisdiction to review an issue not raised before the ALJ.³

In regard to the temporary total disability issue, the Board has held, on numerous other occasions, that the preliminary hearing statute gives the ALJ the authority to grant or deny temporary total disability and medical compensation.⁴ The Board only has jurisdiction from appeals from preliminary hearing orders to review allegations that the ALJ exceeded his or her jurisdiction.⁵ This includes review of the jurisdictional issues set forth

¹ Preliminary Hearing, February 6, 2001, pp.3-5.

² Preliminary Hearing at pp. 20-21.

³ See K.S.A. 44-555c(a).

⁴ See K.S.A. 44-534(a)(2).

⁵ See K.S.A. 44-551(b)(2)(A) .

in the preliminary hearing statute.⁶ Here, the Board concludes, at this juncture in the proceedings, the ALJ did not exceed her jurisdiction and the Board does not have jurisdiction to review a preliminary finding in regard to whether an injured worker satisfied the definition of being temporarily and totally disabled.⁷

As provided the Act, preliminary hearing findings are not binding, but are subject to modification upon a full hearing on the claim.⁸

WHEREFORE, it is the finding, decision and order of the Appeals Board that respondent's appeal in this matter should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this _____ day of April 2001.

BOARD MEMBER

cc: Stephen J. Jones, Wichita, KS
Kirby A. Vernon, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

⁶ See 44-534(a)(2).

⁷ See K.S.A. 44-510c(b)(1).

⁸ See K.S.A. 44-534(a)(2).